

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8046 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN Sd/- and
MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

GHISALAL CHHAVRA

Versus

UNION OF INDIA

Appearance:

MR PH PATHAK for Petitioner
MR AS KOTHARI for Respondent No. 1
MR KK SHAH for Respondent No. 3

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 5/12/97

CAV JUDGMENT (Per Shah, J.)

This petition under Article 227 of the Constitution challenges the judgment and order dated October 21, 1997 passed by the bench of Central Administrative Tribunal at Ahmedabad rejecting Original Application No. 355 of 1997 with Misc. Application No. 804 of 1997 filed by the petitioner herein for

challenging the seniority of respondents nos. 3 and 4 herein for the combines cadre of booking clerks and ticket checkers in the Western Railway as fixed by respondent no. 2 in the year 1985.

2. The Tribunal has dismissed the application on the ground that the decision taken by the department as far back as in the year 1985 treating respondents nos. 3 and 4 as senior to the petitioner is challenged before the Tribunal after a long lapse of 12 years and, therefore, the petitioner is not entitled to rake up this dispute. As regards the petitioner's contention that he had made representations in the year 1985 and 1988, the Tribunal has given a finding that there is no material on the file to show that the representations made in the year 1985 and 1988 had at all been received by the concerned authority. The Tribunal has referred to letter dated 23.8.1996 from the Divisional Railway Manager, Ajmer, respondent no. 2 herein, addressed to the Station Superintendent, Ajmer asking whether the petitioner's alleged representations dated 18.3.1985, 11.3.1988, 11.7.1994 and 14.5.1995 were received from the petitioner and in reply thereto, in his letter dated 30.11.1996, the Station Superintendent stated that representations dated 10.7.1994 and 14.5.1995 had been received, which would naturally mean that the representations dated 18.3.1985 and 11.3.1988 were not received. Hence, the finding of fact given by the Tribunal cannot be said to be arbitrary or perverse.

3. Mr Pathak, learned counsel for the petitioner vehemently urged that the petitioner had made representations in the year 1985 and 1988 through proper channel and, therefore, the petitioner cannot be blamed if the petitioner's immediate superior at Marwar Junction did not forward the representations to the Competent Authority. As regards the petitioner's plea on this factual aspect, we are prepared to assume that the petitioner had made such representations in the year 1985 and 1988. However, the learned counsel for the petitioner concedes that admittedly the petitioner had not received any reply to any such representations and that for the first time the petitioner received reply dated 25.10.1996 that the petitioner's representations of the year 1994 and 1995 were rejected on the ground that the panel in question was published as far back as in the year 1985 and the petitioner had not made his representation in time.

4. In the case of Rabindra Nath v. Union of India, AIR 1970 SC 470, a Constitution Bench of the Apex Court

made the following observations :-

"We are not anxious to throw out petitions on this ground (delay & laches), but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not set aside after the lapse of a number of years."

The same principle was followed by the Apex Court in the case of K.R. Mudgal v. R.P.Singh, (1986) 4 SCC 531 holding as under :-

"Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. In the present case the appellants had been put to the necessity of defending their appointments as well as their seniority after nearly three decades, this kind of fruitless and harmful litigation should be discouraged. The High Court was wrong in rejecting the preliminary objection raised on behalf of the appellants (who were respondents in the writ petition before the High Court) on the ground of laches."

The Tribunal has, therefore, rightly followed the aforesaid principles and found that the petitioner's claim was barred by gross delay and laches.

5. As regards the petitioner's contention that since he had made representations in the year 1985 and 1988, the Tribunal had already given the aforesaid finding that such representations were not received by the Competent Authority. But even assuming that the petitioner had

made such representations from time to time, as per the settled legal position, repeated representations cannot justify an employee in approaching the Court beyond reasonable time. In the case of State of Haryana v. Miss Ajay Walia, JT 1997 (6) SC 592, Their Lordships of the Supreme Court have held that representations repeatedly given to various authorities do not furnish the employee fresh cause of action to file writ petition after inordinate delay. In that case, the selection was made in the year 1982 and the respondent therein had made applications to various authorities from time to time which did not bear any fruit and ultimately the respondent therein filed a writ petition in the High Court in the year 1995. On merits, the High Court allowed the writ petition. The Apex Court held that the petition was filed after an inordinate delay. Representations repeatedly given to various authorities do not furnish the employee fresh cause of action to file writ petition and that the High Court was wholly unjustified in entertaining and allowing the writ petition.

In the instant case, the Tribunal was, therefore, justified in holding that repeated representations did not enlarge the period of limitation for the petitioner. The Tribunal has rightly observed that even assuming that the petitioner had made representations in the year 1985, he could have waited for six months for the reply to his representation and not receiving any reply he ought to have approached the Tribunal within one year from the date of expiry of six months as provided in sections 20 and 21 of the Administrative Tribunals Act, 1985. If the petitioner's representation did not invite any reply from the respondent, nothing prevented the petitioner from approaching the Tribunal within the time stipulated by law.

Even where such representations are given and espoused by the immediate superiors, the employees would not be justified in sleeping over their claims and laying the claim of seniority over other affected employees after inordinate delay. It has been so held by the Apex Court in the case of Rajalakshmiah v. State of Mysore, AIR 1967 SC 993.

6. Learned counsel for the petitioner heavily relied on the decision in the case of R.M. Ramual vs. State of H.P., AIR 1989 SC 357 for contending that the Court should have entertained the petitioner's plea on merits inspite of delay in approaching the Tribunal. We have

perused the said decision. Far from assisting the petitioner, that decision clearly goes against the petitioner; in as much as in that case, the seniority list prepared in the year 1971 did not cause any prejudice to the appellant and by a subsequent order passed in the year 1982, the Government accepted the representation of respondents nos. 4 and 5 therein directing that the said respondents be treated senior to the appellant. Hence, the cause of action arose to the appellant for filing the writ petition in April, 1982 and, therefore, the Apex Court held that there was no delay in challenging the impugned order of the State Government of April, 1982 and consequential final seniority list, when the petition came to be filed by the appellant therein before the High Court.

7. On merits, the Tribunal has found that respondents nos. 3 and 4 were appointed in service earlier than the petitioner and that in the various seniority lists issued from time to time, this position was reflected and respondents nos. 3 and 4 were assigned seniority on the basis of their initial date of appointment. Mr Pathak, learned counsel for the petitioner, however, submitted that on one occasion respondents nos. 3 and 4 were put in a lower pay scale i.e. Rs. 260-400 and got posting as Ticket Checkers whereas the petitioner had remained in the higher scale of Rs. 260-430 in the post of Booking Clerk and, therefore, the petitioner was entitled to be treated on a higher footing. Assuming that it is open to us to go into the merits of the aforesaid contention, it is required to be noted that admittedly the post in the pay scale of Rs. 360-400 as well as the post in the pay-scale of Rs. 260-430 are feeder posts for promotion to the higher cadre and the Circular (Annexure "E") on which reliance is placed by the petitioner shows that the employees in the lower pay-scale are entitled to higher seniority if they secured more than 80% marks at the examination. After considering the material on record, the Tribunal has given a finding that there is no prima facie evidence on record to show that the panel prepared in the month of February, 1985 contravenes the instructions issued by the Railway Board.

8. In the aforesaid background and in view of the undisputed finding given by the Tribunal that both respondents Nos. 3 and 4 had been appointed in service prior to the petitioner's appointment and in the various seniority lists issued from time to time, this position was reflected and respondents nos. 3 and 4 were assigned seniority on the basis of their initial date of

appointment, it is not possible to hold that the petitioner has made out a case for reopening of his case on the question of seniority.

9. In view of the aforesaid discussion, there is no substance in any of the contentions urged on behalf of the petitioner. The petition fails and is summarily dismissed.

Sd/-

(K. Sreedharan, CJ.)

Sd/-

(M.S. Shah, J.)